

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of XAVION JASHON PEOPLES
and JAIYA MICHELLE PEOPLES, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

TAMIRA Y. PEOPLES,

Respondent-Appellant.

UNPUBLISHED

June 7, 2007

No. 272972

Ingham Circuit Court

Family Division

LC No. 00-627041-NA

Before: Markey, P.J., and Sawyer and Bandstra JJ.

MEMORANDUM.

Respondent appeals as of right from the order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Respondent does not challenge the trial court's findings regarding MCL 712A.19b(3)(g) and (j). Rather, she contends that the trial court violated her constitutional right to a jury trial for the adjudicative phase of the case. Child protective proceedings are divided into two distinct phases: the adjudicative phase and the dispositional phase. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006), citing MCR 3.972; MCR 3.973. The adjudicative phase involves a determination whether the trial court may exercise jurisdiction over the children. *Id.* During the adjudicative phase, a trial may be held to determine whether any of the statutory grounds alleged have been proven. *Id.* If a trial is held, respondent is entitled to a jury determination of the facts. *Id.* The dispositional phase involves a determination of what action will be taken on behalf of the children. *Id.* at 537. Unlike the adjudicative hearing, at the initial dispositional hearing, respondent is not entitled to a jury determination of the facts. *Id.*

Because respondent timely requested a jury trial, the trial court erred in proceeding with a bench trial at the adjudicative phase of the case. However, such error qualifies as harmless pursuant to MCR 2.613 and MCR 3.902(A). Clear and convincing legally admissible evidence established that at least one statutory ground existed to terminate respondent's parental rights. In light of such clear and convincing evidence, we cannot characterize as inconsistent with

substantial justice respondent's deprivation of a jury's determination, pursuant to the lower preponderance of the evidence standard, that the children fell within the court's jurisdiction under MCL 712A.2(b)(2).¹

Respondent next challenges the trial court's assumption of jurisdiction in this matter. To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction has been established by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). We review the decision to exercise jurisdiction for clear error in light of the trial court's findings of fact. *Id.* Respondent does not challenge the trial court's finding that her home, by reason of neglect, cruelty, drunkenness, criminality or depravity, was an unfit place for the children to live in. Rather, respondent appears to be arguing that the trial court lacked subject-matter jurisdiction because the children were not "found within" Ingham County since she was living in Indiana. However, the offenses against the children occurred in Ingham County and the children were physically present in the county when they were taken into the court's temporary custody. Therefore, they were "found within" the county under the definition provided in MCR 3.926.

We affirm.

/s/ Jane E. Markey

/s/ David H. Sawyer

/s/ Richard A. Bandstra

¹ We note that this Court recently determined that a trial court errs when it terminates a respondent's parental rights following an adjudicative hearing, without first affording the respondent a dispositional hearing. *In re AMAC*, *supra* at 536 (citing MCR 3.972; MCR 3.973). Here, the trial court terminated respondent's parental rights at the conclusion of a single hearing combining the adjudication and dispositional proceedings. Thus, at first glance, the trial court proceedings appear, perhaps, to have been deficient. *Id.* However, MCR 3.973 permits a trial court to hold a dispositional proceeding immediately after the adjudication trial, as well as to proceed with the dispositional hearing in respondent's absence, provided that proper notice has been given. Here, respondent was notified that the hearing would address both whether the court should assume jurisdiction over respondent's children and whether respondent's parental rights should be terminated. Despite this notice, respondent elected not to appear at the hearing, thereby waiving her opportunity to present evidence to persuade the court that termination was not in the children's best interests. Therefore, the concerns addressed by this Court in *In re AMAC*, *supra* at 536, are not implicated here.